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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,541	04/18/2001	Ryan C. Kinter	1778.0200000 (00128.00US)	6813
26111	7590	11/28/2005	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			PAN, DANIEL H	
			ART UNIT	PAPER NUMBER
			2183	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/836,541	Applicant(s) KINTER ET AL.	
	Examiner Daniel Pan	Art Unit 2183	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8, 10-15 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7 and 9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5, 6 and 10-14 is/are allowed.
- 6) ☒ Claim(s) 15 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                                         |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/28/04, 09/20/05</u> . | 6) <input type="checkbox"/> Other: _____                                                |

1. Claims 1-3,5, 6, 8, 10, -14. Claim 15 has been added. Claim 4, 7, 9 have been canceled.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 15,17-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The reasons are given below :

As to claim 15 , Claim 15 is not limited to tangible embodiments. In view of applicant's disclosure, specification page ( 13), paragraph ( 0054), the microprocessor core is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., ( CD-RO.M )) and intangible embodiments (e.g., (carrier wave ) (see also the internet , intranet, and transmission medium). As such, the claim is not limited to statutory subject matter and is therefore non-statutory. Based on the above cited specification, the microprocessor core does not necessarily include hardware, and it can also be implemented in , for example, a carrier wave, which is not tangible. Claim

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15 recites the method for transmitting the microprocessor core over communication network (lines 1-2), and the transmission of program code over the communication network (see last line) . As discussed above , the embodiment is not limited to tangible embodiment . The communication network can be internet, intranet, or carrier wave as taught by applicant in the specification. It raised a question whether the transmission of microprocessor core and the transmission of computer readable program code over the network is directed to just the code or the code carried by a medium or signal. The transmission of either the microprocessor core or the program code over the network (internet, carrier wave) is itself not tangible unless there is a tangible, concrete , useful result or practical application. In the instant case, the examiner has not found any tangible, concrete , useful result or practical application. The main scope of claim 15 as seen by examiner is the method for **transmitting** the microprocessor core (e.g. the code or the code describing the hardware) over the network, and applicant already taught the embodiment can be embedded in carrier wave (see page 13). Any form of coding or plan for coding of the functional descriptive material that may be used (or may be available for use) to produce coded functional descriptive material, is merely an abstraction. An abstraction (such as "program code") as applied to functional descriptive material does not meet the legal definition of a manufacture. Examiner will entertain applicant's feedback regarding the practical application of the claimed scope. Suggestions, "method executed in a computer", "computer-readable program code executed in a computer", or the like, may help to clarify the issue.

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3. As to claims 17-19, claims 17-19 further recited the hardware descriptive language. However, as discussed above, if this language is just the code carried by the transmission medium it is not tangible.

4. As to claim 20, transmission over the Internet is not tangible.

5. Claims independent 1, 5, 8, are allowable over the art of record as indicated in previous action, but with a few suggestions for a correction which examiner thinks may help to clarify the claimed scope as follow :

6. As to claim 1, insert "executed by said processor" after "an instruction set" in line 2 .

7. As to claim 5, insert "for execution in said processor and " after "a method" in line 1.

8. Claim 10 is allowable over the art of record with a suggestion for a correction as follow :

9. Insert "executed by a processor" after "instruction set" in line 4. This correction will also provide antecedent basis for the processor in the last line of the claim.

10. Claim 16 is objected, upon the pending condition of "101" set forth in this action, to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 16 further defined details of how the tag was compared and set to

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generate a selection signal to select the desired PIWF configurations by the multiplexor.

Applicant's amendment necessitated (addition of claim 15) the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Pan whose telephone number is 703 305 9696, or the new number 571 272 4172. The examiner can normally be reached on M-F from 8:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chan, can be reached on 703 305 9712, or the new number 571 272 4162. The fax phone number for the organization where this application or proceeding is assigned is 703 306 5404.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***21 Century Strategic Plan***

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